

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL
INSURANCE COMPANY,

Plaintiff,

vs.

Civil Action No. 03-40266-CBS

TOWN OF NORTH BROOKFIELD,
Defendant.

AFFIDAVIT OF STEPHEN J. BEATTY IN SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON COUNT II OF DEFENDANT'S COUNTERCLAIM

I, Stephen J. Beatty, am Chief Surety Counsel in the bond claims department of the Kemper Insurance Companies, which include American Manufacturers Mutual Insurance Company ("AMMIC"). I have personal knowledge of the following, except where stated to be upon information and belief. I make this affidavit in support of AMMIC's Motion for Summary Judgment on Count II of Defendant's Counterclaim. Capitalized terms that I have not defined herein will have the meaning ascribed to them in AMMIC's Memorandum of Law in Support of AMMIC's Motion for Summary Judgment on Count II of Defendant's Counterclaim.

1. AMMIC, as surety, issued a performance bond (the "Bond") to the Town of North Brookfield (the "Town") on behalf of the E.J. Sciaba Contracting Co., Inc. ("Sciaba Contracting"), as principal.

2. In January 2003 I was employed by AMMIC and held the title of Senior Surety Counsel. Beginning in or about January 2003, I was responsible for managing and directing AMMIC's response to any activity related to the bonds issued to Sciaba Contracting.

3. In or about March 2003, I engaged GREYHAWK, North America LLC (Richard P. Anastasio, P.E.) to provide engineering and claims-management expertise in AMMIC's investigation of Sciaba. At or about this time AMMIC began its investigation of Sciaba

Contracting's performance at the North Brookfield Project and all Sciaba Contracting's AMMIC-bonded construction projects.

4. On March 13, 2003 I faxed a letter to Sciaba Contracting's principal, Edward J. Sciaba, Jr. In that letter I requested a meeting with Mr. Sciaba and others in order to review the North Brookfield Project and other Sciaba construction projects bonded by AMMIC. A true and accurate copy of my March 13, 2003 letter is attached hereto as Exhibit 1.

5. Pursuant to my March 13, 2003 letter, I traveled from Illinois to the North Brookfield Project and other project sites in the latter part of March 13, 2003. Mr. Anastasio accompanied me on this trip and at these meetings.

6. Upon North Brookfield's request, I again traveled to the North Brookfield Project and attended an on-site meeting on May 21, 2003. I understood that the purpose of this meeting was to discuss performance issues on the Project. I was accompanied by Mr. Anastasio and AMMIC's outside legal counsel, Deborah S. Griffin, Esq., of Holland & Knight LLP.

7. Shortly before the May 21, 2003 meeting with the Town, I participated in a meeting with Mr. Sciaba, his attorney Bert Capone, and Ms. Griffin. During this meeting we discussed all Sciaba Contracting's AMMIC-bonded construction contracts and Sciaba Contracting's overall financial condition. During this meeting, I requested that Mr. Sciaba provide me with current financial information relative to (1) Sciaba Contracting as an organization and (2) all AMMIC-bonded construction projects.

8. In or about May 2003, I retained Tofias, P.C. (Frank Zito, C.P.A.) to provide forensic accounting services in aid of AMMIC's investigation of both Sciaba Contracting and all Sciaba Contracting's AMMIC-bonded projects.

9. On July 21, 2003, Mr. Anastasio and GREYHAWK provided me with a preliminary analysis and assessment of the status of the North Brookfield Project, including a projected cost to complete, the status of payment bond claims, and other data. Throughout June and July 2003 Mr. Anastasio communicated with me frequently regarding particulars of the Project as they were discovered and learned in our investigation.

10. On or about October 15, 2003, I met with Thomas W. McEnaney and Kieran Meagher, attorneys for the Town. Ms. Griffin accompanied me at this meeting. We discussed, among other issues, AMMIC's overpayment defense. At this meeting, Ms. Griffin and I requested additional detail and supporting documentation for the Town's damage claims on the Bond.

11. AMMIC paid Keyspan Energy \$16,560 on or about September 27, 2005.

Signed under the penalties of perjury this _____ day of December, 2005.

/s/ Stephen J. Beatty
Stephen J. Beatty